

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Rosaline El-Khoury

(b) County of Residence of First Listed Plaintiff Montgomery
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorneys (Firm Name, Address, and Telephone Number)
Steven B. Barrett, Esquire**DEFENDANTS**

FK Intermediate, LLC d/b/a Fireking Security Group

County of Residence of First Listed Defendant Floyd

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	PROPERTY RIGHTS	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	SOCIAL SECURITY	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	PERSONAL PROPERTY	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 880 Defend Trade Secrets Act of 2016	<input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)
<input type="checkbox"/> 190 Other Contract	<input checked="" type="checkbox"/> 360 Other Personal Injury	LABOR	PROPERTY RIGHTS	<input type="checkbox"/> 485 Telephone Consumer Protection Act
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 720 Labor/Management Relations	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
		<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application	<input type="checkbox"/> 890 Other Statutory Actions
		<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 891 Agricultural Acts
		<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 880 Defend Trade Secrets Act of 2016	<input type="checkbox"/> 893 Environmental Matters
			SOCIAL SECURITY	<input type="checkbox"/> 895 Freedom of Information Act
		IMMIGRATION	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
		<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 871 IRS—Third Party
		<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 26 USC 7609
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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 13 Boraten Circle, Royersford, PA 19468

Address of Defendant: 101 Security Parkwa, New Albany, IN 47150

Place of Accident, Incident or Transaction: Collegeville, PA

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- | | | |
|--|------------------------------|--|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case is / is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 12/06/2021



Must sign here

65857

Attorney I.D. # (if applicable)

CIVIL: (Place a ✓ in one category only)**A. Federal Question Cases:**

- 1. Indemnity Contract, Marine Contract, and All Other Contracts
 - 2. FELA
 - 3. Jones Act-Personal Injury
 - 4. Antitrust
 - 5. Patent
 - 6. Labor-Management Relations
 - 7. Civil Rights
 - 8. Habeas Corpus
 - 9. Securities Act(s) Cases
 - 10. Social Security Review Cases
 - 11. All other Federal Question Cases
- (Please specify): _____

B. Diversity Jurisdiction Cases:

- 1. Insurance Contract and Other Contracts
 - 2. Airplane Personal Injury
 - 3. Assault, Defamation
 - 4. Marine Personal Injury
 - 5. Motor Vehicle Personal Injury
 - 6. Other Personal Injury (Please specify): Premises
 - 7. Products Liability
 - 8. Products Liability – Asbestos
 - 9. All other Diversity Cases
- (Please specify): _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, _____, counsel of record or pro se plaintiff, do hereby certify:

- Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- Relief other than monetary damages is sought.

DATE: _____

Sign here if applicable

Attorney-at-Law / Pro Se Plaintiff

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROSALINE EL-KHOURY :
13 Boraten Circle :
Royersford, PA 19468 : No. 2:21-cv-5323
Plaintiff :
v. :
FK INTERMEDIATE, LLC d/b/a/ :
FIREKING SECURITY GROUP :
101 Security Parkway :
New Albany, IN 47150 :
Defendant :

COMPLAINT

Plaintiff, Rosaline El-Khoury, by and through her counsel, Hamburg, Rubin, Mullin, Maxwell & Lupin, P.C., hereby files this Complaint against Defendant, FK Intermediate, LLC d/b/a FireKing Security Group, and alleges as follows:

PARTIES

1. Plaintiff, C Rosaline El-Khoury, is an adult individual with a residential address of 13 Boraten Circle, Royersford, Pennsylvania 19468
2. Defendant, FK Intermediate, LLC, is a limited liability company with administrative offices located at 101 Security Parkway, New Albany, Indiana 47150.
3. It is believed and therefore averred that Defendant, FK Intermediate, LLC¹, is one of several entities that conduct business under the fictional name FireKing Security Group.

¹ In a letter to Undersigned Counsel dated August 23, 2021, Travelers Insurance identified their “insured” as FK Intermediate, LLC. That disclosure was in response to an August 16, 2021 letter of representation Undersigned Counsel sent to “Fire King Security Group” at 900 Park Place, New Albany, IN 47150.

JURISDICTION AND VENUE

4. This Honorable Court has personal jurisdiction over Defendant because Defendant regularly conducts business in the Eastern District of Pennsylvania and otherwise has contacts that are sufficient for the exercise of personal jurisdiction. *See Int'l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310 (1945) and its progeny.

5. This Honorable Court has subject matter jurisdiction over Defendant and the matters complained of in this Complaint pursuant to 28 U.S.C. § 1332 because the Parties are citizens of different states, and the amount in controversy is greater than \$75,000.00.

6. Venue for this action is properly laid in the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1391(b)(2) because the events giving rise to Plaintiff's claims occurred herein.

FACTUAL BACKGROUND

7. Plaintiff, Rosaline El-Khoury, is a licensed pharmacist employed by CVS Pharmacy, Inc. ("CVS").

8. In her role as a pharmacist, Plaintiff is required *inter alia* to fill prescription drug orders submitted by licensed medical professionals and dispense those orders to customers.

9. Plaintiff and pharmacists like her regularly handle controlled substance medications, including narcotics and other addictive medicines that are prone to robbery, theft, and other forms of diversion.

10. In an effort to mitigate the threat of diversion, CVS requires its pharmacists store controlled substance medications in large metal safes, which operate on a time-delay.

11. Such large, time-delay safes are used in every CVS pharmacy location throughout the Commonwealth of Pennsylvania.

12. While Plaintiff typically works at the CVS pharmacy located in 351 W, Schuylkill Road, Pottstown, Pennsylvania 19465, she occasionally works at other nearby CVS pharmacies, including the CVS pharmacy located at 55 Park Avenue, Collegeville, Pennsylvania 19426 (the “Collegeville Location”).

13. The Collegeville Location is equipped with three (3) separate controlled substance safes, one of which stores the prescription medication, Vicodin (the “Vicodin Safe”).

14. The Vicodin Safe is a large metal safe. A true and correct photograph of the Vicodin Safe is attached hereto as Exhibit A.

15. The Vicodin Safe is manufactured by Defendant, FK Intermediate, LLC.

16. It is believed and therefore averred that the Vicodin Safe was installed by Defendant.

17. Because of its significant size and weight, the Vicodin Safe (and safes like it) are required to be secured to an adjoining wall.

18. In fact, the Vicodin Safe installed at the Collegeville Location came equipped with a set of bolts, nuts, and washers designed to fasten the safe to a wall.

19. However, at all times relevant hereto, the Vicodin Safe, was not fastened to any wall.

20. In fact, unbeknownst to Plaintiff, the Vicodin Safe was not secured to any object at all.

21. On or about July 6, 2021, Plaintiff worked a shift at CVS’ Collegeville Location.

22. During her shift at the Collegeville Location on or about July 6, 2021, Plaintiff was asked to fill a prescription for Vicodin.

23. To that end, Plaintiff approached the Vicodin Safe, entered the required passcode, and waited approximately three (3) minutes for the Vicodin Safe's time-delay feature to permit her access.

24. Once the Vicadin Safe opened, Plaintiff began searching its shelves for the medication required to fill the prescription.

25. As Plaintiff searched for the medication, the Vicodin Safe, suddenly and without warning, shifted forward and fell onto Plaintiff, causing Plaintiff to fall backwards and violently strike her head on a shelf located behind her.

26. Plaintiff was treated at the AFC Urgent Care facility in Phoenixville, Pennsylvania later than evening, at which time she was diagnosed with a concussion and directed to submit to weekly monitoring thereafter.

27. In the coming days and weeks, Plaintiff's condition worsened, leading to her admission to Phoenixville Hospital on or about July 30, 2021.

28. Since the incident described hereinabove, Plaintiff learned from colleagues that the Vicodin Safe was never secured to the wall, as required.

COUNT I – NEGLIGENCE

29. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.

30. At the time the above-referenced time, place, and location, the Vicodin Safe was located and in use at CVS's Collegeville Location.

31. Defendant designed the Vicodin Safe.

32. Defendant manufactured the Vicodin Safe.

33. Defendant installed the Vicodin Safe at the Collegeville Location.

34. Defendant had a duty to design, manufacture, and install the Vicodin Safe in such a way to ensure the safety and well-being of any and all individuals working in, with, or near the Vicodin Safe.

35. Defendant and its agents, servants, workmen, and/or employees were negligent and/or careless by:

- a. Failing to bolt or otherwise secure the Vicodin Safe to a wall or other stationary object within the Collegeville Location, so as to prevent it from injuring persons, such as Plaintiff;
- b. Failing to make reasonable inspection of the Vicodin Safe, which would have revealed the existence of the danger posed thereby;
- c. Failing to properly supervise the installation of the Vicodin Safe;
- d. Failing to properly maintain the Vicodin Safe;
- e. Failing to hire and/or retain proper employees, agents, servants, workmen or contractors for the inspection, maintenance and correction of the dangerous condition presented by the Vicodin Safe;
- f. Failing to give warning of the dangerous condition posed by the unsecured Vicodin Safe;
- g. Failing to formulate, adopt and enforce adequate rules, procedures and policies to ensure that Defendant's products, including the Vicodin Safe, are properly and safely installed;
- h. Designing the Vicodin Safe in such a manner as to render it unstable and unsafe when not properly secured to a wall or other stationary object;

- i. Failing to take any other measures to ensure the Vicodin Safe was stable and secure.
36. Defendant knew or should have known that the Vicodin Safe, as installed, posed an unreasonable risk of injury to employees, including Plaintiff.

37. The said negligence and carelessness of Defendant was a direct, proximate and substantial cause of Plaintiff's injuries and damages as set forth hereunder and incorporated herein.

COUNT II - DAMAGES

38. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.

39. By reason of the negligence and carelessness of Defendant, Plaintiff violently forced to the ground, causing her to suffer severe and serious injuries including injuries to her head (including a concussion), vision, bones, cartilages, ligaments, muscle, nerves, and tissue, all of which may be permanent; Plaintiff was caused to suffer emotional distress; Plaintiff was caused to suffer aches, pains, mental anguish, shock and disability; Plaintiff was unable to undertake duties and activities for a period of time since the accident, and believes that she will suffer impairments and disabilities in the future, which will prevent Plaintiff from pursuing ordinary activities, including work activities; Plaintiff has further been compelled to obtain medical treatment and attention in an effort to alleviate said serious injuries, and believes that she will be compelled to do so in the future. Further, Plaintiff's general health, strength and vitality have been impaired.

40. By reason of the negligence and carelessness of Defendant, Plaintiff has been unable to fulfill her familial and parental duties to her two young children and has been forced to seek the assistance of her parents, who have resided with Plaintiff since August 2021.

41. As a further, direct and proximate result of the aforesaid occurrence, negligence, and resulting injuries, Plaintiff has been caused to suffer a loss of earnings and earning capacity, which is or may be permanent in nature.

42. As a further, direct and proximate result of the aforesaid occurrence, negligence, and resulting injuries, Plaintiff has suffered embarrassment, humiliation, emotional distress and loss of the pleasures of life, all of which is or may be permanent in nature.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests this Court enter judgment in Plaintiff's favor and against Defendant for:

- a. actual or compensatory damages in such amount to be determined at trial and as provided by applicable law;
- b. consequential damages;
- c. pre-judgment and post-judgment interest;
- d. court costs and other litigation expenses; and
- e. any other relief the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a jury trial pursuant Federal Rule of Civil Procedure 38.

Respectfully submitted,

By:

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Date: December 6, 2021

EXHIBIT A

